

good job of providing for that transition. If we add a benefit through Medicare that helps with that transition, we have a commonsense solution that will improve the quality of health care for our seniors and save taxpayers money. I am very pleased that this provision is included in the health care bill that is before us now or that we hope will be before us soon.

We can also contain health care costs by improving access to lower cost generic drugs. Again, that is something that is in the health care reform bill we are going to be considering. It gives people access to those lower cost generic drugs in a way that saves, generally, anywhere from 25 to 35 percent for generic drugs. It also sets up a process to give people access to lower cost biologic drugs—something we do not yet have, the ability to set up a process to give people access to generic biologics. So that is going to be able to save people money.

This legislation we hope to be able to work on will help Americans access lower cost medications. It will save taxpayers money. This is our opportunity to improve the quality of care available to Americans and to control costs at the same time. It is critical we achieve this for the citizens of New Hampshire and for all Americans. The Patient Protection and Affordable Care Act is a very important step forward. I hope all my colleagues will, as we debate this bill, look at the important changes we are making and decide this is our opportunity to get real, meaningful health care reform done.

Thank you, and I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

#### SEPTEMBER 11 TERRORISTS' TRIALS

Mr. BOND. Madam President, faith has written many painful chapters in America's history. Each is sharply engraved in our memories. Many involve military conflict: the British burning of Washington, the Civil War, Pearl Harbor, Iwo Jima, Pork Chop Hill.

Others were singular acts of aggression, such as the bombing of the Oklahoma City Federal Building, the assassinations of Martin Luther King and Presidents Lincoln, McKinley, and Kennedy.

September 11, 2001, is the latest painful chapter in American history, one that forever will be burned into our memories as a day of horror unlike any we have experienced before. The sheer magnitude and deliberate evil of the attacks that day defy comprehension. Who among us will soon forget the wrenching images of passenger planes used as missiles aimed at the World Trade Center Towers and the Pentagon or the people diving out of 70-story windows to avoid being burned again, and the heroic and selfless final acts of passengers aboard Flight 93 as it headed toward the Nation's Capital? Who among us will forget the pictures and

the hopeful messages that sprang up around the area where the World Trade Center once proudly stood as relatives searched in vain for loved ones?

Three thousand men and women perished that day at the hands of terrorists who cared nothing for the innocent lives they stole. As the towers fell, their comrades and sympathizers, including Khalid Shaikh Mohammed, diabolically cheered the devastation.

It is these memories of 9/11 that make last week's decision by the Obama Justice Department to give the mastermind of these attacks and his associates all the rights and benefits of a civilian trial in New York City unexplainable and compel me to rise to voice my strong objection to that decision.

It is an insult to the memories of those who were brutally murdered on September 11 that the perpetrator of these cowardly acts will sit in a courtroom blocks away from Ground Zero and reap the full benefits and protections of the U.S. Constitution. Even worse than the insult to the victims and their families is the dangerous precipice the Obama Justice Department has now crossed with this foolhardy decision. Earlier this year, the Homeland Security Secretary signaled an alarming change of perspective about the nature of the enemy we face. No longer would we call the acts of terrorism what they are: acts of war. Instead, according to Secretary Napolitano, the accepted terminology for an attack such as 9/11 would now be a "man-caused disaster." Apparently, 9/11 was no different than a forest fire started by an arsonist.

This initial change in terminology was troubling enough, but trying Khalid Shaikh Mohammed and his 9/11 associates in civilian Federal court sends a loud and clear signal that this administration is now comfortable recasting certain acts of terrorism as simply what the Attorney General calls "extraordinary crimes." I have to wonder if the Attorney General thinks Pearl Harbor was an extraordinary crime. In the logic of this administration, murdering 3,000 civilians, including servicemembers at the Pentagon, is an extraordinary crime, justifying trial in a civilian court. Yet killing 17 servicemembers aboard the USS Cole is an act of war or the murder of 13 servicemembers at Fort Hood justifies continued proceedings before the military commissions. This arbitrary distinction makes no sense and shows a disturbing lack of understanding of the nature of this war.

It also creates a perverse incentive for terrorists to attack civilians so they may benefit from our treasured constitutional protections. KSM understood the benefits of these protections when, as former CIA Director George Tenet has said, KSM defiantly told CIA interrogators after his capture: "I'll talk to you guys after I get to New York and see my lawyer." He was counting on going to New York to get the protections of our Constitution.

Words are simply words, but the mentality that these words represent is dangerously naive. Whether it is called a man-caused disaster or extraordinary crime, refusing to treat the September 11 perpetrators as terrorists, deserving only of a trial before a military commission, is a dangerous throwback to the pre-9/11 mentality that resulted in the attack on the USS Cole, the bombings of our embassies, and the first World Trade Center bombing.

Ordinarily, I support the concept of prosecutorial discretion and the right of the executive branch to bring criminal actions against perpetrators as supported by the facts. But in this instance, this discretion must give way to the larger national security interests of our country. In spite of the stated intention of KSM to plead guilty in the military commission, the Attorney General has asserted he believes there is a greater chance of success against these 9/11 coconspirators in civilian court. This belief—one I do not share—does not justify the enhanced risks to our security and the dangerous precedent for the treatment of future terrorists this trial will bring.

That this case will establish a very bad precedent was made clear by the Attorney General in his testimony before the Senate Judiciary Committee, when he summarily dismissed concerns that the decision to bring 9/11 coconspirators into the Federal justice system would preclude an intelligence community interrogation of Osama bin Laden if he were captured. The Attorney General refused to say whether bin Laden would be given Miranda warnings upon capture and claimed "the case against him is so overwhelming" that there would be no need to rely on any statements he might make after capture. Mr. Holder called the concerns about not being able to interrogate bin Laden a "red herring." Well, unfortunately, the Attorney General's testimony shows a complete lack of understanding that the purpose of intelligence interrogations is to stop planned attacks and to take down terrorist networks, not to elicit confessions for use in a criminal trial.

It is beyond troubling that the Attorney General, as the head of the Department of Justice, the Justice Department's FBI National Security Division—the very people charged with preventing terrorist attacks, such as those disrupted in New York, Illinois, and North Carolina, seem to have no interest in obtaining valuable intelligence from bin Laden. As the leader of al-Qaida, bin Laden clearly has considerable knowledge of its network, its members, its methods, and its potential plots to kill more Americans. So what the Attorney General calls a red herring, I call a red flag.

Some have hailed the administration's decision as a way to showcase our judicial system for the world, but the Attorney General has confirmed that in the event KSM or one of his associates is acquitted, he will still be

detained indefinitely. Are you sure, Mr. Attorney General, that a court will not order him released?

This begs the question: Why should we incur the time, expense, and risk our national security on a show trial if we are just going to detain these terrorists forever anyway? Rather than showcasing our judicial system, this strange logic seems to make a mockery of the civilian judicial system. While the Attorney General has declared that failure is not an option, he does not control judicial rulings, nor the facts and perceptions that may sway any one of 12 jurors who will decide KSM's fate. A conviction will be expected, but there can be no guarantees.

Make no mistake, America is still at war. The war on terror is real. It will not go away just by calling it another name. We cannot afford to bury our heads in the sand. While Khalid Shaikh Mohammed may ultimately be convicted, our success in the war against terror will only be final when we have hunted these terrorists into extinction. We need look no further than the terror plots disrupted earlier this fall in New York, Colorado, Illinois, and at Quantico, to name a few, to understand the threats we faced on September 11 are still very real. For the men and women massacred in cold blood at Fort Hood, the ongoing threat of terrorism is all too real.

The Obama administration is standing at a crossroads of history. It can either persist in downplaying the reality that we are at war with terrorists or it can affirm that its top priority is to keep Americans safe by winning this war on terror.

Madam President, success in this war on terror cannot simply be defined as getting a guilty verdict against KSM in a civilian Federal court. If the Department of Justice jeopardizes our intelligence sources and methods, incurs unnecessary security risks, and creates a high-profile public platform for KSM to spew his hatred and espouse hirabah, they will only increase the likelihood that these detainees will proselytize fellow inmates in Federal prisons and convert followers worldwide. That is not success; that is failure of the worst kind—an avoidable failure.

These are not the hypothetical gambles that some on the left have dismissed casually. As former Attorney General Michael Mukasey, who presided as a judge over one of the trials, has stated, we know these domestic terror trials have exposed sensitive classified information and given important intelligence information to al-Qaida, allowing them to go undetected in more ways than they need.

A few examples:

The east Africa Embassy bombing trials made Osama bin Laden aware that cell phones were being intercepted, prompting al-Qaida to alter its methods of communication.

The trial of the World Trade Center bomber, Ramzi Yousef, tipped off terrorists to a communications link that

provided “enormously valuable intelligence,” but was “shut down” after the disclosure.

Within days of being provided to the defense in the Omar Abdel-Rahman trial, the blind shaikh, a list of undicted coconspirators, including Osama bin Laden, was provided to bin Laden.

During the trial of Zacarias Moussaoui, 48 classified documents—reports of FBI interviews with witnesses—were inadvertently provided to Moussaoui as part of the government's pretrial discovery response. In ordering the U.S. Marshals to seize the documents from Moussaoui's cell, the judge noted that “significant national security interests of the United States could be compromised if the defendant were to retain copies of this classified information.”

I believe these examples provide ample evidence that public trials of these types of terrorism cases are a clear win for terrorists seeking to learn more about our intelligence sources and methods.

Were there no alternatives, we would proceed with this type of trial, despite the risk, because our Nation values due process. However, the military commissions process, first approved by Congress in 2006, and again last month, ensures a fair trial with rights to counsel, discovery, and appeal, but without the costs and risks of Federal civilian trials.

The concept of military commissions is one our Nation has relied upon before. When Congress created the military commissions process after September 11, it established a framework to ensure that intelligence sources and methods would not be jeopardized. While changes have been made over the years to the process itself in light of Supreme Court decisions, the general framework and principles remain solidly in place.

This process isn't new to this administration either. The administration is not only using this process, the Attorney General announced that the USS *Cole* bomber will still be tried under the commission. They worked with Congress to make the changes to it themselves.

Yet in the case of the 9/11 conspirators, the administration has chosen to reject the tried and true method of prosecuting enemy combatants in a venue where intelligence sources and methods are unlikely to be compromised in favor of circuses that will make the trial of Zacarias Moussaoui, with its endless motions and Moussaoui's challenge of a duel to former Attorney General Ashcroft, seem like a mundane proceeding.

This is an unnecessarily dangerous gamble. While the decision to take this gamble with our national security is clearly a matter for the executive branch, the administration has found a willing ally in many of my colleagues in Congress. Earlier this month, I joined 44 other Senators, from both

sides of the aisle, in supporting an amendment to prohibit taxpayer funds from being used to prosecute in a civilian court the 9/11 perpetrators. Unfortunately, we were outvoted. The amendment didn't pass.

I encourage my colleagues to rethink their opposition. When the appropriate time comes, I hope they will reaffirm that our national security interests must have priority over politically correct prosecutions.

America is rightfully a different nation today than it was before September 11. We were attacked in a way and at a magnitude that we hope never to experience again. But we simply cannot rely on hope alone. Following these terrorist attacks, we took critical steps to try to ensure we are never attacked like this again. We made sure that we gave our intelligence professionals the tools they needed to fight terrorists, not just criminals. We gave them the tools they needed to fight a war and keep America safe.

We must always remember the lessons of September 11. We owe it to the victims of these and other terrorist attacks to keep our Nation safe. I call on the President from this floor to reverse this disastrous decision by the Attorney General and reaffirm his commitment to our national security and to winning this war against terrorism.

I yield the floor.

**THE PRESIDING OFFICER.** The majority leader is recognized.

**MR. REID.** Madam President, I apologize to the Republican leader. I was detained in my office talking to another Senator, so I apologize for not being here and his having to wait.

#### UNANIMOUS CONSENT AGREEMENT—H.R. 3590

**MR. REID.** Madam President, I ask unanimous consent that on Friday, November 20, at 10 a.m., the Senate proceed to a period of debate on the motion to proceed to H.R. 3590, until 11 p.m., with the time controlled in alternating 1-hour blocks, with the majority controlling the first hour; and at 10 p.m., Friday, there be 30-minute blocks until 11 p.m., with the majority controlling the first 30 minutes; further, that on Saturday, November 21, at 10 a.m., the Senate continue with controlled debate in alternating blocks until 6 p.m., with the majority controlling the first hour block; that at 6 p.m., the majority control the time until 6:30 p.m., the Republicans then control 6:30 to 7:15 p.m., the majority control 7:15 p.m. to 7:30 p.m., the Republican leader controls 7:30 to 7:45, and the majority leader controls 7:45 to 8 p.m.; that at 8 p.m., the Senate proceed to vote on the motion to invoke cloture on the motion to proceed to H.R. 3590; that if cloture is invoked on the motion, then all postcloture time be yielded back, the motion to proceed be agreed to, and the motion to reconsider be laid upon the table; that after the bill is reported, the majority leader be recognized to